

RBS and RUS, USDA

§ 4280.108

subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the USDA's interest.

§ 4280.105 Appeals.

Only the grantee, borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. An adverse decision regarding a grant or direct loan application may be appealed by the applicant only. Appeals will be handled in accordance with 7 CFR part 11 of this title. Any party adversely affected by an Agency decision under this subpart may request a determination of appealability from the Director, National Appeals Division, USDA, within 30 days of the adverse decision.

§ 4280.106 Conflict of interest.

No conflict of interest or appearance of conflict of interest will be allowed. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant, loan, and guaranteed loan funds or award of project contracts to an individual owner, partner, stockholder, or beneficiary of the applicant or borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the applicant or borrower.

§ 4280.107 Applicant eligibility.

(a) To receive a grant or loan under this subpart, an applicant must meet each of the criteria, as applicable, as set forth in paragraphs (a)(1) through (5) of this section.

(1) The applicant must be an agricultural producer or rural small business.

(2) Individuals must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence.

(3) Entities must be at least 51 percent owned, directly or indirectly, by individuals who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence.

(4) Applicants and owners will be ineligible to receive funds under this subpart as discussed in paragraphs (a)(4)(i) and (ii) of this section.

(i) If an applicant or owner has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the applicant is not eligible to receive a grant, direct loan, or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

(ii) If an applicant has been debarred from receiving Federal assistance, the applicant is not eligible to receive a grant, direct loan, or guaranteed loan under this subpart.

(5) A grant applicant must have demonstrated financial need.

(b) An applicant that has received one or more grants and/or loans under this program must make satisfactory progress, as determined by the Agency, toward completion of any previously funded projects before it will be considered for subsequent funding.

§ 4280.108 Project eligibility.

For a renewable energy system or energy efficiency improvement project to be eligible to receive a grant or loan under this subpart, the proposed project must meet each of the criteria, as applicable, in paragraphs (a) through (g) of this section.

(a) The project must be for the purchase of a renewable energy system or to make energy efficiency improvements.

(b) The project must be for a pre-commercial or commercially available, and replicable technology.

(c) The project must have technical merit, as determined using the procedures specified in § 4280.112(d).

(d) The project must be located in a rural area, as defined in § 4280.103.

(e) The applicant must be the owner of the project and control the revenues and expenses of the project, including

operation and maintenance. A third-party under contract to the owner may be used to control revenues and expenses and manage the operation and/or maintenance of the project.

(f) Sites must be controlled by the agricultural producer or small business for the financing term of any associated Federal loans or loan guarantees.

(g) Satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and debt service of the project must be available for the life of the project.

SECTION A. GRANTS

§ 4280.109 Qualification for simplified applications.

When applying for a grant, applicants may qualify for the simplified application process. In order to use the simplified application process, each of the conditions specified in paragraphs (a)(1) through (8) of this section must be met.

(a) *Simplified application criteria.* (1) The applicant must be eligible in accordance with § 4280.107.

(2) The project must be eligible in accordance with § 4280.108.

(3) Total eligible project costs must be \$200,000 or less.

(4) The proposed project must use commercially available renewable energy systems or energy efficiency improvements.

(5) Construction planning and performing development must be performed in compliance with § 4280.115. The applicant or the applicant's prime contractor must assume all risks and responsibilities of project development.

(6) The applicant or the applicant's prime contractor is responsible for all interim financing.

(7) The proposed project is scheduled to be completed within 24 months after entering into a grant agreement. The Agency may extend this period if the Agency determines, at its sole discretion, that the applicant is unable to complete the project for reasons beyond the applicant's control.

(8) The applicant agrees not to request reimbursement from funds obligated under this program until after project completion, including all operational testing and certifications acceptable to the Agency.

(b) *Application processing and administration*—(1) *Application documents.* Application documents shall be submitted in accordance with § 4280.111 or, if applying for a combined grant and loan, also in accordance with § 4280.193(c).

(2) *Demonstrated financial need.* The applicant must certify that it meets the definition of demonstrated financial need, as defined in § 4280.103. The Agency may require the applicant to provide supplemental information that will allow the Agency to make its own determination of the applicant's financial need.

(3) *Project development.* Section 4280.115 applies, except as follows:

(i) Any grantee may participate in project development without direct compensation subject to the approval in writing by the prime contractor, provided that all applicable construction practices, manufacturer instructions, and all safety codes and standards are followed during construction and testing, and the work product meets all applicable manufacture specifications, and all applicable codes and standards. The prime contractor remains responsible for all the overall successful completion of the project, including any work done by the grantee, or

(ii) A grantee who can demonstrate to the Agency that the grantee has the necessary experience and other resources to successfully complete the project may serve as the prime contractor/installer. Projects where the grantee serves as the prime contractor will need to secure the services of an independent, professionally responsible, qualified consultant to certify testing specifications, procedures, and testing results.

(4) *Project completion.* The project is complete when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency. Upon notification of receipt of an acceptable project completion report, the applicant may request grant reimbursement. The Agency reserves the right to observe the testing.

(5) *Insurance.* Section 4280.113 applies, except business interruption insurance is not required.